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tion for the cutting of trees thereon in the construction of a telephone line, his remedy at law is adequate, and he is not entitled to injunction.

EVIDENCE—PRIVILEGES—RIGHT OF JURY TO DRAW INFERENCE—FROM REFUSAL OF PARTY TO WAIVE PRIVILEGE.—PENN. R. R. CO. v. DURKEE, CIRCUIT COURT OF APPEALS (JULY 24TH, 1906).—*Held*, that in an action for damages for injuries to the person, the trial judge properly refused to charge the jury that they might infer from the plaintiff's refusal to waive her privilege, and allow her physician to testify as to her condition, that such testimony would have been unfavorable to her, or in fact to make any inference at all.

EVIDENCE—WITNESSES—IMPEACHMENT—CONTRADICTORY STATEMENTS—STATEMENTS CONSISTENT WITH TESTIMONY.—BURKS v. STATE, 93 S. W. 983 (ARKANSAS).—*Held*, that where a witness has denied having made statements contradictory of his testimony, and evidence of contradictory statements is admitted, former statements of his consistent with his testimony are not admissible to support him, in the absence of proof of change in the circumstances or relations which might have prompted a recent fabrication or design to misrepresent the facts. See Comment *ante*.

EVIDENCE—CREDIBILITY OF WITNESS.—ELECTRIC FIREPROOFING CO. v. SMITH, 99 N. Y. SUPP. 37.—*Held*, that the credibility of a witness need not be submitted to the jury when his evidence is not contradicted directly nor by legitimate inference and is not improbable, surprising, or suspicious. Houghton, J., *dissenting*.

The general rule is that the question as to whether testimony is credible or not and to what extent it is so, is the exclusive province of the jury. *Hammill v. R. R. Co.*, 93 Ky. 343; *White v. Ross*, 35 Fla. 377. If the court submits the credibility of the undisputed testimony of a witness to the jury, it is error for which a higher court may set the verdict aside. *Denton v. Carroll*, 4 N. Y. App. Div. 535. But where evidence between witnesses is in any way conflicting it is the province of the jury to determine its credibility. *Fuerty v. Fritz*, 6 Col. 137. Under what circumstances the trial court may assume a question of fact to exist concerning which there is no conflict in the practice seems to be to submit to the jury all questions of fact not expressly admitted. *Gay v. Tielkemeyer*, 64 Mo. App. 112. Whether the testimony of a witness is suspicious is a question for the jury in some states. *VanVacter v. McKillip*, 7 Blackf. (Ind.) 578.

EVIDENCE—EXPERIMENTS.—TACKMAN v. BROTHERHOOD OF AMERICAN YEOMAN, 106 N. W. 350. Where in an action in a mutual benefit certificate providing that defendant should not be liable if the member committed suicide, the evidence showed deceased was found dead in his stable strangled and suspended in a partially sitting posture by a portion of a bridle hanging on a peg on which harness was usually hung, *held*, evidence of experiments showing that, if a bridle was hung in the ordinary manner on the peg in question, a person of the same height and weight as deceased would, if he fell with his head in a loop formed by a strap of the bridle, be caught and strangled if he did not regain his balance, was admissible.

In general it is permitted to show in proof of an alleged fact, that a result similar to the fact in question was obtained from an experiment performed